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February 6, 2004

**VIA UPS AND ELECTRONIC MAIL**

Mary L. Cottrell, Secretary
Massachusetts Department of
Telecommunications and Energy
One South Station
Boston, MA 02110

**Re: D.T.E. 03-60: Reply of the Loop/Transport Carrier Coalition to Verizon Massachusetts, Inc.'s Opposition to the Motion to Strike**

Dear Ms. Cottrell:

The Loop/Transport Carrier Coalition ("LTCC" or "Coalition")[1], in the interest of administrative efficiency, by its attorneys, hereby respectfully submits this letter in lieu of a formal reply to the opposition to the Motion to Strike of the LTCC[2] filed by Verizon Massachusetts, Inc. ("Verizon") on January 30, 2004, in the above docket. Based on the response provided by Verizon, the LTCC renews its Motion to Strike and requests that the Massachusetts Department of Telecommunications and Energy ("Department") strike the portions of Verizon's Direct and Supplemental Testimony identified in Appendix A to its Motion to Strike. In support of this renewed request, the LTCC submits that Verizon, despite a third attempt, still has not satisfied its burden of proof in this proceeding. Verizon has failed to demonstrate that the fact-specific triggers set forth under the Federal Communications Commission ("FCC")'s Triennial Review Order and required by this Department have been met for each route Verizon is seeking relief for from the Department, identified in its Direct and Supplemental Direct Testimony filed with the Department.[3]

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1 The LTCC is comprised of Broadview Networks, Inc., Choice One Communications of Massachusetts Inc., Focal Communications Corporation of Massachusetts and XO Massachusetts, Inc.

2 The Motion to Strike was filed with the Department on January 13, 2004.

3 *See* Direct Testimony and attachments of Conroy/White filed on November 14, 2003, and the Supplemental Direct Testimony and attachments of Conroy/White filed on December 19, 2004.

In its opposition, Verizon claims the LTCC misunderstands the requirements set forth under the Triennial Review Order, dedicating pages of argument as to how the LTCC is seeking to impose "phantasm" rules and requirements on Verizon by requiring that Verizon demonstrate that the triggers are met on specific routes for wholesale dedicated transport. Verizon's rhetoric aside, a route specific case, as described in the LTCC's Motion to Strike and rejected by Verizon, is precisely what Verizon is required to put forth in Massachusetts by both the FCC and this Department.[4] In fact, Verizon acknowledges this requirement to this Department in its October 3, 2003 letter to the Department, stating "Verizon MA will be requesting in this proceeding that the Department consider impairment for loops, transport and mass market switching solely on the basis of the triggers set forth in the FCC's rules adopted in the *Triennial Review Order*."[5]

The rules cited to by Verizon even demonstrate the fact that Verizon is required to put forth facts demonstrating non-impairment "along a particular route"[6] for dedicated transport. But this is not what Verizon did. Instead, Verizon bases its case on a series of generalizations and assumptions such as a carrier's willingness "to lease certain routes in the state to other carriers implies that it is willing to lease *other routes* as well, including the routes at issue,"[7] or that a "carrier *generally offers* to sell access to its route to other carriers."[8] When the LTCC challenged these blanket assumptions, Verizon did not put forth specific facts, instead, Verizon claimed that the LTCC is "intentionally ignoring the obvious,"[9] by not accepting Verizon's claims. Verizon is ignoring the obvious: that it is required to put forth a triggers case and satisfy the fact specific requirements of the rules before a finding of non-impairment can be made. An assumption based case was not intended by the FCC, as the FCC state that actual marketplace evidence was most probative.[10] Accepting any assumed evidence could result in an erroneous

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4 *See e.g.*, 47 C.F.R. § 51.319 *et seq. See also, Hearing Officer Ruling on Motion for Protective Treatment of Highly Sensitive Confidential Information of SBC Telecom, Inc.; Motion of WilTel Local Network, LLC for Protective Treatment of Highly Sensitive Confidential Information; and Motion of AT&T Communications of New England, Inc. for Heightened Protection of its Response to Department's Request Number 11*, October 31, 2003 at 6 ([p]articularly in this instance, where Verizon has the burden to prove a "triggers case," it would be inappropriate for the Department to allow CLECs to eliminate all possibility of Verizon sustaining that burden by denying Verizon access to the information required to present its case.)

5 *See Verizon October 3, 2003 letter* at 1.

6 *See* 47 C.F.R. §§ 51.319 (e)(1)(ii), (e)(2)(i) and (e)(3)(i), cited to in *Verizon October 3, 2002 letter at fn. 1*.

7 *See Verizon Opposition* at 11 (*emphasis supplied*).

8 *Id.*, at 6 (*emphasis supplied*).

9 *Id.*, at 11.

10 *TRO* at ¶ 92.

finding of "non-impairment" on a particular route leaving carriers no option but to purchase transport from Verizon at its exorbitantly high special access prices.

In addition, this Department has made it abundantly clear that Verizon is required to put forth a "triggers case" and not an assumptions case of what carriers might do on some routes in Massachusetts. Verizon's case based on its own "facts" ranging from statements made on websites that are neither Massachusetts specific or route specific, or information in tariffs, many of which have not been updated to reflect the actually offerings of the carrier, do not satisfy the requirements set forth under the transport triggers. For example, Verizon, in claiming that the dedicated transport trigger has been met, has assumed that any two fiber based collocations in a LATA constitutes a "transport route" on which facilities have been deployed. This assumption does not demonstrate the existent of a dedicated transport route (the connection between two ILEC wire centers). In fact, as the FCC warned, accepting this assumption would "effectively leverage the claim that competition exists [based on the mere presence in a wire center], and remove the bundling obligations … without any proof that a requesting carrier could either self provide or utilize alternative transport to reach the location."[11] Further, out of the ten carriers identified as wholesale providers in Massachusetts, only six provided responses to the Department's information requests, the remaining four have never submitted any information regarding the types of facilities and services offered in Massachusetts. Yet Verizon claims these carriers satisfy the fact specific triggers, that their failure to demonstrate a contrary position to Verizon's case is "deafening".[12] The Department should not be duped into believing that Verizon has satisfied its burden by silence of other carriers. For further discussion, including specific carrier identification and confidential information, the LTCC respectfully requests that the Department refer to its member's Rebuttal Testimony being filed today in this docket.

In sum, based on the fact specific triggers that Verizon itself admits it is required to demonstrate, Verizon has not met its burden of proof for finding of non-impairment for the wholesale triggers in Massachusetts. The LTCC respectfully requests that the Department grant its Motion to Strike.

Respectfully submitted,

*/s/*

Steven A. Augustino
Erin W. Emmott

cc: Service List (via electronic mail)

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[11] *TRO* at ¶ 401 (citations omitted).

[12] *Verizon Opposition* at 11.